privilege where an absolute discharge is granted, and where the plea is held good (see authorities before cited).

The plaintiff contends that the defendant submitted to the arrest, made application to give bail, and entered into a bond, and that this constitutes a waiver of his privilege. We do not think this sound, though we are aware that some cases seem to point in this direction: *Fletcher* v. *Baxter*, 2 Aiken (Vt.) 224; *Brown* v. *Getchell*, 11 Mass. 11, 14.

The question, however, was directly passed upon in *United States* v. *Edme*, 9 S. & R. 147, 149, and it was there decided that the giving of a bail bond is so far from waiving the privilege, that the court when they discharge will order it to be delivered up and cancelled. It is not esteemed any good ground for presuming a waiver of privilege from arrest, because the person takes the ordinary and most expeditious mode of freeing himself from arrest:" REDFIELD, J., in *Washburn* v. *Phelps*, 24 Vt. 506.

It appears in this case that an answer to the merits was filed with the plea in abatement; it has been decided that in Massachusetts the validity of neither is affected by their being pleaded together, and that the plea in abatement is not thereby waived: *Fisher* v. *Fraprie*, 125 Mass. 472; *O'Loughlin* v. *Bird*, 128 Id. 600.

Upon the whole we are of the opinion that the plea in abatement should be sustained. Action dismissed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME COURT OF MISSOURI.[3]
SUPREME COURT OF NEW JERSEY.[4]
SUPREME COURT OF VERMONT.[5]

ADMIRALTY.

Collision—Damages, Measure of—Partial Insurance—Recovery of Half Damages.—Upon a libel for collision libellant may be allowed

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1881. The cases will probably appear in 14 or 15 Otto.

[2] From Hon. N. L. Freeman, Reporter; to appear in 103 Illinois Reports.

[3] From T. K. Skinker, Esq., Reporter; to appear in 75 Missouri Reports.

[4] From G. D. W. Vroom, Esq., Reporter; to appear in vol. 15 of his Reports.

[5] From Edwin F. Palmer, Esq., Reporter; to appear in 54 Vermont Reports.

damages for the loss of the use of his vessel while undergoing repairs, and if at the time of the collision she was in no need of repair, and was engaged in and peculiarly fitted for a particular business, and her charter value cannot be otherwise satisfactorily ascertained, the average of the net profit of her trips for the season may be adopted as the measure of the allowance: *Steamboat Potomac* v. *Cannon*, S. C. U. S., Oct. Term 1881.

A vessel being insured on two-thirds of her valuation by valued policies, by which in case the insurers should pay any loss the assured agreed to assign to them all right to recover satisfaction from any other person, or to prosecute therefor at the charge and for the account of the insurers if requested, and that they should be entitled to such proportion of the damages recovered as the amount insured bore to the valuation in the policies, the assured filed a libel in admiralty against another vessel for damages by collision. The insurers paid the libellant two-thirds of that damage, and released and assigned to the owners of the libelled vessel all their right in any damages growing out of the collision. It appearing that the collision resulted from mutual fault, only half damages were allowed. *Held*, that one-third of the sum paid by the insurers must be deducted from the amount to be recovered: *Id.*

AGENT.

Power to employ Sub-agent—Secret Agreement with Adverse Party.—An agent to sell has no implied power to bind his principal by an agreement to pay another commissions for making sales: *Atlee* v. *Fink*, 75 Mo.

A dealer in lumber agreed to pay to a builder, who was employed to superintend the erection of buildings for others, and whose duty it was to pass upon accounts presented for materials furnished, but not to make purchases, a commission on all sales of lumber made to the builder's employers through his influence. This agreement was not made known to the employers. *Held*, that it was against public policy and void: *Id.*

ATTORNEY.

Joint Employment—Partnership—Division of Fees.—Attorneys undertaking jointly the defence of a suit at law, become, as to that case, special or limited partners. In the absence of agreement to the contrary, they will be entitled to share equally in the compensation, and it does not matter that one may do more of the work than the other. This will not entitle him to charge as for extra services. Nor will he have any remedy against the other, by dissolution of the partnership or otherwise, for failure to perform his full duty: *Henry* v. *Bassett*, 75 Mo.

Power to Compromise.—An attorney, without special authority, has no power to bind his client by a compromise or settlement of the cause of action unless he receives the full amount of his client's claim in money; and this is so though the client lives in another state: *Granger* v. *Batchelder*, 54 Vt.

Stipulation as to Amount of Fee—Subsequent Allowance of Attorney Fee—Costs.—When there is an express agreement between solicitor and client, whereby the solicitor undertakes to do certain services respect-

ing the client's interest in an estate for a certain sum stipulated to be paid by the client, and in the performance of the duty so undertaken the solicitor takes proceedings in the client's behalf in the Court of Chancery, which result in settling the estate and severing and securing the client's share, and entitle him, under the agreement, to the specified compensation; in an action therefor the client ought to be credited with a sum allowed by the chancellor to the solicitor in the proceedings in chancery out of the general fund of the estate, when it appears that the services rendered by the solicitor in those proceedings were such as were included in his contract with his client: *Shreve* v. *Freeman*, 15 Vroom.

BANK. See *Taxation.*

BILLS AND NOTES. See *Receiver.*

Note given for Fraudulent Claim—Consideration.—A note given to settle a fraudulent claim, one wholly without foundation, and known by both parties to be such, under threats of suit, is without consideration and void; and cannot be collected by a third party, though purchased before due, when such party was not only put upon inquiry, but also acted in bad faith in buying, he being a general purchaser of the payee's notes and knowing his dishonest methods in obtaining them: *Ormsbee* v. *Howe*, 54 Vt.

Transfer without Endorsement—How Suit brought by Transferree.—If a note payable to order be not endorsed by the transferrer, the holder cannot sue in his own name, for, although the holder may possess the entire beneficial interest, the legal title is still outstanding in the transferrer, and his name should be used to maintain the suit: *State* v. *High Bridge M. E. Church Assoc.*, 15 Vroom.

If no endorsement be on a note payable to order, and it does not appear on the face of the note that the payee is agent of plaintiffs, the suit cannot be maintained in their name: *Id.*

Signature of Officer of Company—When it does not create Individual Liability—Practice—Denial of Signature.—A bill of exchange headed "Office of Belleville Nail Mill Co.," and concluding "charge same to account of Belleville Nail Mill Co., A. B., Pres't., C. D., Sec'y.," is the bill of the company, and the officers signing are not individually liable: *Hitchcock* v. *Buchanan*, S. C. U. S., Oct. Term 1881.

A statute prohibiting defendants in actions upon written instruments from denying their signatures except under plea verified by affidavit, does not apply to a case in which the defendants demur because the instrument declared on appears upon its face to be the contract of their principal and not of themselves: *Id.*

CONSTITUTIONAL LAW.

Grant of right of Taxation—Power to Repeal—What amounts to Repeal.—A special law authorized the township of North Brunswick to convey to the city of New Brunswick a poor-farm owned by the former, and situate within its limits, and declared that the farm should be liable to taxation by the township so long as it should be embraced within it; and under this law the conveyance was made: *Held*, that the legislature could, constitutionally, repeal this power of taxation: *State* v. *Williamson*, 15 Vroom.

A declaration in a general law that all acts or parts of acts, whether local or special, or otherwise, inconsistent with its provisions, are repealed, will repeal inconsistent provisions in prior special acts: *Id.*

CONTRACT. See *Agent.*

Illegal Contract—Guarantee on not enforceable.—Where a bank charter contains a clause that no director of the corporation shall be indebted to it, either directly, or indirectly, at any time, to an amount greater than seventy-five per cent. of the capital stock held by him in good faith as his own, and a director has become indebted to the bank in excess of such sum, a note given by him to the bank for a further sum will be illegal and void, and any guaranty of a third person of its payment, being in aid and furtherance of such illegal contract, will be equally void, and no recovery can be had upon such guaranty, although the guarantor is not a director: *Workingmen's Banking Co.* v. *Rautenberg*, 103 Ill.

CORPORATION. See *Bills and Notes; Partnership.*

COSTS. See *Attorney; Errors and Appeals.*

Trust Estate—Litigation of one Cestui Que Trust for common benefit—Allowance of Costs out of Fund.—Where a large number of bonds issued by a corporation are secured by a trust fund which is being wasted or misapplied by the trustees, or which they refuse or neglect to apply to the payment of the bonds, a holder of a portion of such bonds who in good faith files a bill to secure the due application of the fund, and succeeds in bringing it under the control of the court is entitled to have his costs, counsel fees and necessary expenses of the litigation paid out of the fund: *Trustees of Int. Imp. Fund* v. *Greenough*, S. C. U. S., Oct. Term 1881.

Such complainant, however, is not entitled to an allowance for private expenses, such as travelling fares and hotel bills, nor for his time or personal services: *Id.*

The practice of allowing extravagant counsel fees and commissions to trustees, complainants, receivers and their counsel to be paid out of trust funds, commented on and disapproved: *Id.*

CRIMINAL LAW.

Passing Counterfeited Obligation—Sufficiency of Indictment—Allegation of Knowledge.—An indictment on sect. 5431, U. S. Rev. Stat., alleging in the words of the statute that the defendant, feloniously and with intent to defraud, did pass, utter and publish a falsely made, forged, counterfeited and altered obligation of the United States, but not further alleging that the defendant knew it to be false, forged, counterfeited and altered, is insufficient even after verdict: *United States* v. *Carll*, S. C. U. S., Oct. Term 1881.

DAMAGES. See *Parent and Child.*

Failure to pay Money—Interest.—The law assumes that interest is the measure of damages for failure to fulfil a contract to pay money, and, therefore, beyond the payment of such interest a city is not liable to its

creditor for damages caused by his pecuniary embarrassment consequent upon the failure of the city to meet its obligations to him: *London* v. *Taxing District of Shelby County*, S. C. U. S., Oct. Term 1881.

Debtor and Creditor.

Compromise—When not Binding—Fraud.—A compromise voluntarily made without any fraud or imposition will not be set aside, however disadvantageous it may be. But if a debtor fraudulently conceals his property, and by a false and fraudulent representation of his inability to pay, induces his creditor to compound his debt, the creditor will not be bound by the composition: *Ackerman* v. *Ackerman*, 15 Vroom.

Plaintiff recovered a judgment for $4000; defendant transferred stock of which he was owner, the par value of which was $11,000 or $12,000, in trust for his wife, to put it beyond reach of execution on the judgment, and left the state. On representations by defendant that he had nothing to pay with, the plaintiff, without knowledge of the fraudulent transfer by the defendant of his property, was induced to sign a satisfaction-piece on payment of $50, and the judgment was cancelled of record. *Held*, that the satisfaction-piece was procured by fraud and that the cancellation of record should be vacated: *Id.*

Discovery. See *United States Courts.*

Equity.

Affirmative Relief on Answer.—Necessity of Cross-Bill.—Affirmative relief cannot be granted to a defendant in chancery upon his mere answer to the bill. To obtain such relief the defendant must file a cross-bill praying for the relief he seeks: *White* v. *White*, 103 Ill.

Errors and Appeals.

Decree for Costs—When a Final Decree—Payment out of Special Fund.—While in ordinary cases an appeal does not lie from a decree in equity for costs only, yet it does lie when the costs are directed to be paid not by a particular party but out of a fund under control of the court: *Trustees of Int. Imp. Fund* v. *Greenough*, S. C. U. S., Oct. Term 1881.

Evidence.

Attempt to Influence a Witness.—On the trial of an action on the case, brought against a city railway company to recover for a personal injury, the court allowed a witness for the plaintiff to testify that a clerk in the employ of the defendant offered him $300, either to prevent him from appearing as a witness against the company, or to influence his evidence in favor of the company. This was objected to as no part of the *res gestæ*. *Held*, that the evidence was proper, though not a part of the *res gestæ*: *Chicago City Railway Co.* v. *McMahon*, 103 Ill.

Location of Town—Judicial Notice.—The court will take judicial notice of the county in which an incorporated town is situated, and of the fact whether such county is under township organization: *People* v. *Suppiger*, 103 Ill.

Legislative Proceedings—Printed Journal.—The printed journals of

either house of a legislature, published in obedience to law, are competent evidence of its proceedings: *Amoskeag Nat. Bank* v. *Ottawa*, S. C. U. S., Oct. Term 1881.

Former Recovery.

Suit for Interest—When not a bar to subsequent Suit for Principal—Where a promissory note, running, according to the face of it, for several years, provides that the interest shall be payable annually, and "if the interest is not so paid the entire principal sum shall immediately become due and payable," the omission to pay the interest for a given year will not operate to render the annual interest thus accrued and unpaid, together with the principal sum, an entire demand, and a recovery for one year's interest will not operate as a bar to a subsequent suit for the interest accrued in the succeeding year: *Wehrly* v. *Morfoot*, 103 Ill.

Fraud. See *Debtor and Creditor.*

Guarantee. See *Contract.*

Guardian and Ward.

Gift by Ward to Guardian—When Invalid.—The gift from a ward to a guardian is voidable; and the burden of proof is on the donee to show that the transaction was fair; that it was freely, voluntarily and understandingly made; and that the donor had competent and disinterested advice as to the subject-matter of the gift: *Wade* v. *Pulsifer*, 54 Vt.

The settlement and approval of the guardian's account by the Probate Court; the presence of the wards, their husbands and attorney on that occasion, it not appearing that the subject-matter of the gift was up for consideration; their receipts; their expression of approval of the accounts; their declarations that they did not regret the gifts; lapse of time; the death of the donee, and of one of the donors, do not affect the result; and the gifts are set aside: *Id.*

Husband and Wife.

Ante-Nuptial Agreement—Proof of.—When a husband, under the statute, is entitled to a portion of his deceased wife's estate, unless debarred by an ante-nuptial agreement, it is incumbent upon her heirs to show that such agreement existed and was in force at the time of her decease, to prevent his taking according to the statute: *Graves* v. *Wakefield*, 54 Vt.

Though it may be a presumption that the ante-nuptial agreement now exists because it once existed, yet this may be overcome by the fact that no such agreement was ever found among the wife's papers: *Id.*

A married woman has the power to surrender an ante-nuptial agreement to her husband to be cancelled: *Id.*

Insane Husband—Right of Wife to Control.—A husband, who is insane without a guardian, but of full age, is under the control of his wife in opposition to that of his father; hence it was not a trespass for her agents and by her request to enter the father's dwelling against his protests and resistance, where certain rooms had been exclusively

assigned to the son and his wife for a temporary abode, and, in a careful and prudent manner, to remove the husband to some other place designated by the wife: *Robinson* v. *Frost*, 54 Vt.

The father's rights as natural guardian cease when the son arrives at full age, and are not restored by the son's insanity: *Id.*

Warrant of Attorney by Wife to confess Judgment—When valid.—If the contract of a married woman be such as a married woman is by law incapable of entering into, her warrant of attorney to enter judgment upon it is a nullity, and judgment entered thereon will be vacated. But if the contract be one that a married woman is able to make, and on which she may be sued at law by force of the Married Woman's Act, she may bind herself by a warrant of attorney for the confession of a judgment on such a contract, and the judgment entered in pursuance thereof will be good: *Heywood* v. *Shreve*, 15 Vroom.

Insolvency.

Dividends from Estates of both Principal and Surety.—Amount of.—When a note is allowed by the commissioners against the insolvent estate of a deceased surety, and afterwards a dividend is paid on the note by the trustees of the insolvent principals, who have assigned, in the final distribution of such surety's estate by the Probate Court, the owner of the note is entitled to a dividend only on the balance, and not on the amount so allowed: *Lowell* v. *French*, 54 Vt.

Insurance.

Condition for Notice of other Insurance—Construction of.—A condition annexed to and made part of a policy of fire insurance, which provides that "all and every person insuring in this company must give notice * * * of any other insurance effected in their behalf on said property * * * in which case each office shall be liable to the payment only of a ratable proportion of any loss or damage which may be sustained," &c., is not restricted to other insurance effected prior to the execution and delivery of the policy in question. It is applicable to all other insurances, whether effected before or after the policy in question: *Warwick* v. *Monmouth County Fire Ins. Co.*, 15 Vroom.

Interest. See *Former Recovery.*

Jury.

Right of Challenge—Opinion formed by Juror.—The right of peremptory challenge is the right not to select, but to reject jurors; hence, when one of the respondents peremptorily challenged a juror, and the other insisted that he was qualified and should sit in the trial, the court properly excused such juror: *State* v. *Meaker*, 54 Vt.

The formation and expression of an opinion are not alone the test of a juror's competency; but the nature of the opinion may be inquired into; and, if found to be only a transitory inclination of the mind, based upon rumor or newspaper report, &c., the truth of which the juror does not inquire, nor judge, it is not a disqualifying opinion. To work a disqualification there must be an abiding bias of the mind caused by substantial facts in the case, in the existence of which the

juror believes, an opinion upon the merits of the case upon the guilt or innocence of the accused of the charge laid in the indictment upon the evidence substantially as expected to be presented on trial: *Id.*

LIMITATIONS, STATUTE OF. See *Vendor and Vendee.*

LUNATIC. See *Husband and Wife.*

MASTER AND SERVANT.

Liability for Wrongful Act of Servant—Bribery of Witness by Servant.—Where a clerk of a city railway company, without authority, offers money to a witness to keep him from testifying against the company, or to influence his testimony, the company must be held responsible for his act, and it is proper evidence against the company: *Chicago City Railway Co.* v. *McMahon*, 103 Ill.

The master is liable for not only the careless and negligent acts, but also for the wilful and malicious acts of his servant while acting within the scope of his duty or employment. This rule is well recognised in this state: *Id.*

MORTGAGE. See *Possession.*

Mortgagee in Possession—Liability for Rents.—If a mortgagee enter into possession and then permits the mortgagor to take the profits or to use the mortgage to keep off other creditors, he will be required to account, at the suit of the latter, for the rents and profits for the time he is in possession. In the absence of fraud or neglect of duty he will be required to account for only such as are actually received: *Ely* v. *Turpin*, 75 Mo.

Purchase for Value—When Mortgage is.—The giving of further time for the payment of an existing debt is a valuable consideration, and is sufficient to support a mortgage as a purchase for a valuable consideration: *Cass County* v. *Oldham*, 75 Mo.

Railroad Bonds—Rights of Purchasers in Good Faith—Foreclosure-Sale—Redemption.—The rule that the holder of commercial paper, seeking to enforce in equity a mortgage security therefor, is subject to any defence which would be good against the mortgage in the hands of the mortgagee himself has no application to deeds of trust given to secure railroad coupon bonds intended to be thrown upon the market and circulated as commercial paper, and to be used as securities for permanent investments: *Peoria and Springfield Railroad Co.* v. *Thompson*, 103 Ill.

Where a railroad, its appurtenances and franchises, are mortgaged as a whole, there is no power or authority to sell them separately, and such property, taken as a whole, not being, strictly speaking, either real or personal estate, when sold on a decree of foreclosure is properly sold without any right of redemption. The rule is founded partly upon considerations of public policy: *Id.*

MUNICIPAL CORPORATION.

Power to do authorized Act by Resolution—Judgment of Commissioners of Assessment—Where a common council is authorized to do an act, but the mode of doing it is not prescribed, it may be done by resolution as well as by ordinance: *State* v. *City of Passaic*, 15 Vroom.

The judgment of commissioners of assessment on matters of fact within their lawful cognisance will not be reversed except upon clear proof that it is erroneous: *Id.*

Trespass by City Officer.—If a city officer takes earth from private property and uses it in improving a street of the city without any provision in the charter or elsewhere authorizing such a proceeding, it is a trespass, for which the officer will be individually liable, but not the city: *Rowland* v. *City of Gallatin*, 75 Mo.

NEGOTIABLE INSTRUMENT.

Railroad Bonds—When issued for Money, Labor or Property—Construction of Constitutional Provision.—Where one, for a present consideration, in good faith purchases bonds or stocks in the regular course of business from a railroad company, and such consideration is accepted by the proper officer of the company, and nothing appears to show that it is to be used or applied to other than legitimate corporate purposes, such bonds or stocks, when thus issued, will be regarded as having been issued for money, labor or property "actually received and applied," within the meaning of a constitutional provision prohibiting the issue of bonds or stock except for such considerations: *Peoria and Springfield Railroad Co.* v. *Thompson*, 103 Ill.

NEGLIGENCE.

Railroad—Neglect of Statutory Duty—Evidence.—The omission to discharge any duty imposed by law upon common carriers in the management of their vehicles, in transporting persons and property, is negligence. The fact, therefore, that a railroad company's trainmen failed to ring the bell or sound the whistle as the train approached the crossing of a public road, may be given in evidence in a common-law action against the company for negligently killing plaintiff's steer at the crossing, without being specially pleaded: *Goodwin* v. *Chicago, R. I. and Pacific Railroad Co.*, 75 Mo.

It is not negligence *per se* to run a train at the rate of twenty-five miles an hour across a public road in the country: *Id.*

NOTICE. See *Possession.*

Record of Void Deed.—The record of a deed which is void for insufficiency of description, is not constructive notice, and will not put a stranger upon inquiry: *Cass County* v. *Oldham*, 75 Mo.

PARENT AND CHILD. See *Husband and Wife.*

Contract of Hiring—Measure of Damages—Right of Discharge—Evidence.—If a minor son hire himself out without the knowledge of his father, the father may either adopt the contract and claim whatever is due under it, or he may repudiate it and claim the value of his son's services. In the latter event, if it appears that the employer has permitted the son to use a part of his time for his own purposes, the measure of recovery will be the value of his entire time, less the value of the privilege so accorded to him: *Sherlock* v. *Kimmell*, 75 Mo.

If a father hire out his minor son for an indefinite period, the employer may discharge the son at any time without notice to the father: *Id.*

In an action by a father to recover wages due his minor son, statements made by the son are not admissible as evidence against the father: *Id.*

PARTNERSHIP.

Ownership of Stock in Corporation—Individual Liability of Partners as Stockholders.—Where a partnership owns stock in an insolvent corporation, a member of the firm will be liable to an execution against himself individually, as a stockholder, upon the motion of a creditor of the corporation, in all cases where the firm would be subject to such liability: *Bray's Adm.* v. *Seligman's Adm.*, 75 Mo.

PATENT.

Specification—Sufficiency of—Evidence to explain—Combination of Devices—Priority as between two Inventors—Drawings—Pleadings.—A specification in letters-patent is sufficiently clear and descriptive when expressed in terms intelligible to a person skilled in the art to which the invention belongs: *Webster Loom Co.* v. *Higgins*, S. C. U. S., Oct. Term 1881.

Evidence is admissible to show the meaning of terms used in a patent as well as the state of the art: *Id.*

If an improvement of a well known appendage to a machine is fully described in a specification, it is not necessary to show the ordinary modes of attaching the appendage to the machine: *Id.*

Query—Whether the defence of insufficient description can be set up without alleging an intent to deceive the public? *Id.*

A new combination of well known devices producing a new and useful result (as that of greatly increasing the effectiveness of a machine) may be the subject of a patent: *Id.*

Of two original inventors the first will be entitled to a patent unless the other puts the invention into public use more than two years before the application for a patent: *Id.*

An invention relating to machinery may be exhibited as well in a drawing as in a model, so as to lay the foundation of a claim to priority, if sufficiently plain to enable those skilled in the art to understand it: *Id.*

Though the defence of prior invention ought to be set out in the answer, yet if the omission to set it out is not objected to at the proper time in the court below, it cannot be objected to in the appellate court: *Id.*

POSSESSION.

Notice of Rights under Unrecorded Deed or Mortgage.—Where a person is in possession of land under an unrecorded deed, that possession is notice to all subsequent purchasers or encumbrancers of whatever title is held by the person in possession, to the same extent as if his deed were duly recorded, and a subsequently acquired title, although first on record, will be held subject to the title which the person in possession may have to the property. This rule applies as well to possession held under an unrecorded mortgage: *Brainard* v. *Hudson*, 103 Ill.

PRACTICE. See *Bills and Notes.*

RAILROAD. See *Negligence.*

Liability for Negligence—Injury to Employee of another Road running Trains over its Track.—When one railroad company has a right by contract to run its trains over the track of another railroad company, the latter company is liable for injuries caused solely by the negligence of its own switchman in not properly attending to his duty, to an engineer of the former company while operating his engine on said track; and also to the other company for damage to its property: *In re Central Vt. Railroad Co.*, 54 Vt.

RECEIVER.

Securities taken for Unauthorized Loan—Right of Successor to Recover upon.—If a receiver loan trust funds without legal authority, and take a promissory note for security, the want of such legal authority is not a good defence in an action on the note, brought by a subsequently-appointed receiver, who holds it as part of the assets of the trust estate: *Corbin* v. *De La Vergne*, 15 Vooom.

SHERIFF'S SALE.

Who may Sue Purchaser on his Failure to Pay.—The sheriff who makes a sale under execution, alone can maintain an action against the purchaser for a breach of his contract of purchase. The sheriff, in making such sale, does not act as the agent of the creditor, but as an officer of the law in performing a legal duty: *People* v. *Stelle*, 103 Ill.

STATUTE. See *Constitutional Law; Trial.*

Construction by Usage.—A statute of uncertain meaning, which has been enforced in a certain sense for a long series of years by the different departments of government, will be judicially construed in that sense: *State* v. *Kelsey*, 15 Vroom.

TAXATION. See *Constitutional Law.*

Savings Banks—Exemption under Sect. 3408 *Rev. Stat.—All Deposits entitled to Benefit of.*—The partial exemption from taxation allowed by Sect. 3408 Rev. Stat. to deposits in a savings bank having no capital stock, and operating without profit to itself, applies to all deposits to the extent of $2000 each, and not merely to deposits of $2000 or less: *German Savings Bank* v. *Archbold*, S. C. U. S., Oct. Term 1881.

TRESPASS. See *Municipal Corporation.*

Tax Sale at wrong Hour—Liability of Officer.—A sale of property seized for taxes and sold by a collector at ten o'clock in the forenoon under an adjournment to one o'clock in the afternoon, is irregular, and renders him a trespasser; and the result is the same although the property sold well, was applied on the plaintiff's taxes, and his attorney was present, knew of his mistake and said nothing: *Buzzell* v. *Johnson*, 54 Vt.

TRIAL.

Statute—Existence of—Question of Law.—Whether a seeming act of the legislature is or is not a law is a judicial question to be determined by the court and not a question of fact to be tried by a jury: *Amoskeag Nat. Bank* v. *Ottawa*, S. C. U. S., Oct. Term 1881.

TRUST. See *Costs.*

UNITED STATES COURTS.

Construction of State Constitution—State Decisions followed—Statute.—An act of the legislature of a state which has been held by its highest court not to be a statute of the state because never passed as its constitution requires, cannot be held by the courts of the United States, upon the same evidence to be a law of the state: *Amoskeag Nat. Bank* v. *Ottawa*, S. C. U. S., Oct. Term 1881.

Practice—Proceedings under State Laws to enforce Discovery in aid of Execution—Parties in Federal Courts entitled to Benefit of.—A statutory proceeding under which, after a fruitless execution, a judgment-debtor is summoned before a judge or referee and compelled to make discovery as to his ownership of property, is within the provision of Sect. 916 U. S. Rev. Stat., that the party recovering a judgment in a common-law cause in any Circuit or District Court shall be entitled to similar remedies upon the same as are provided in like causes by the laws of the state in which such court is held: *Ex parte Boyd*, S. C. U. S., Oct. Term 1881.

USURY.

What is.—The defendants, having no money of their own to loan, solely at the request of the orator, and for his benefit, borrowed money, and loaned it to him under an agreement that they were to receive the same rate of interest from him that they were compelled to pay, and also, two per cent. for their expenses and credit, which agreement the master found was reasonable. The orator paid according to the contract, and the defendants paid the same to their lender. *Held*, 1, that the money so paid by the orator was not usury; as the defendants acted *bona fide*, and had no intention of contracting for usurious interest: and have not received to their own use, more than the legal rate. 2. But, that was usury, which was paid in excess of the legal rate, during that portion of the time when the defendants, by reasonable diligence, could have borrowed the money for six per cent: *Ricker* v. *Clark*, 54 Vt.

VENDOR AND VENDEE.

Vendor's Lien—How Lost.—The vendor of real estate, by taking collateral or other security for the purchase-money, waives his lien on the property sold: *Ilett* v. *Collins*, 103 Ill.

Where the debt for the purchase-money of real estate is barred by the Statute of Limitations, no vendor's lien can exist that they may be enforced: *Id.*

Vendor's Lien—Waiver by taking Security.—Where the vendor of land conveys the title and takes as security for the purchase-money the obligations of a third party, in the absence of any agreement to the contrary, he will be deemed to have waived his vendor's lien, and it does not matter that the securities so taken are worthless: *Boyer* v. *Austin*, 75 Mo.